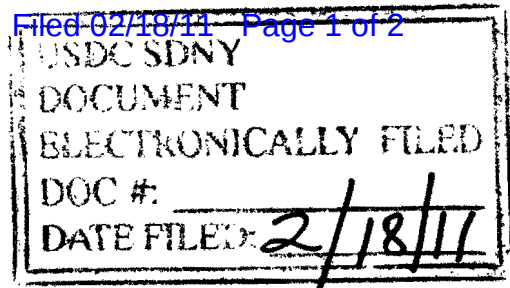


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
ANA MARTINEZ,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.  
-----X

09 Civ. 8996 (RJH)(RLE)

**ORDER**

On October 7, 2010, Magistrate Judge Richard Ellis issued a Report and Recommendation ("Report") recommending that the Court dismiss plaintiff's case without prejudice under Federal Rule of Civil Procedure 4(m) for failure to prosecute.

The district court adopts a Magistrate Judge's report and recommendation when no clear error appears on the face of the record. *See Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). However, the court is required to make a *de novo* determination of those portions of a report to which objection is made, 28 U.S.C. § 636(b)(1)(C), by reviewing "the Report, the record, applicable legal authorities, along with Plaintiff's and Defendant's objections and replies." *Badhan v. Lab. Corp. of Am.*, 234 F. Supp. 2d 313, 316 (S.D.N.Y. 2002). The court may then accept, reject, or modify in whole or in part recommendations of the Magistrate Judge. *See Nelson*, 618 F. Supp. at 1189. If a party fails to object to a report within 14 days of being served with the report, that party waives their right to object and appellate review of the district court's decision adopting the report, absent unusual circumstances, is precluded. *See United States v. Male Juvenile*,

121 F.3d 34, 38 (2d Cir. 1997). To date, the Court has neither received any objections to the Report nor any other communication, such as a letter requesting an extension of time in which to file objections, from Plaintiff.

Plaintiff filed the original complaint in this action on October 26, 2009. Service on defendants the City of New York and the New York City Health and Hospitals Corporation was executed shortly thereafter and those defendants filed an answer on February 19, 2010. Defendant Brain Ellis was served in late March 2010 and filed an answer and counterclaim on March 21, 2010. Martinez has never answered Ellis's counterclaim, never responded to the defendants' interrogatories and requests for documents, and never responded to a notice of deposition. Nor has Martinez's counsel responded to numerous attempts by defendants' counsel to discuss these issues. On September 8, 2010, Magistrate Judge Ellis ordered Martinez to show cause by September 20, 2010 why her case should not be dismissed. Martinez has never responded to that order.

In light of these facts underlying the recommendation, the Court finds that no clear error appears on the face of the record and hereby adopts the Report. The Clerk shall close this case.

SO ORDERED.

Dated: New York, New York  
February 9, 2011



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Richard J. Holwell  
United States District Judge